NOR HASNIZAM AB LATIF

v.

PP

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
MOHD SAARI YUSOFF JCA
KC VOHRAH JCA
[CRIMINAL APPEAL NO: J-05-41-1999]
16 NOVEMBER 2001

CRIMINAL LAW: *Penal Code - Section 300 - Murder - Whether there was intention to commit murder - Nature of deceased's bodily injuries*

This was an appeal by the appellant against the decision of the learned trial judge convicting the appellant for the murder of one Ong Yao Yong ('Yong') and sentencing him to death. The appellant contended that the injury inflicted on Yong, resulting in his death, was accidental.

Held:
Per Mohd Saari Yusoff JCA

[1] From the nature of the injury inflicted on Yong, it could be inferred that the appellant must have intended to kill Yong within the meaning of s. 300 of the Penal Code. Looking from another perspective, the appellant had no reason to draw out the knife, as Yong was only a five-year old child and could not have harmed the appellant. Hence, the learned trial judge had not erred when he concluded that there was no reasonable doubt raised on the prosecution's case. (p 53 a-c)

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini adalah satu rayuan oleh perayu terhadap keputusan hakim perbicaraan yang bijaksana bagi pembunuhan seorang bernama Ong Yao Yong ('Yong') dan menjatuhkan hukuman mati kepada beliau. Perayu menegaskan bahawa kecederaan yang dikenakan ke atas Yong, yang menyebabkan kematiannya, adalah tidak disengajakan.

Diputuskan:
Oleh Mohd Saari Yusoff HMR

[1] Daripada sifat kecederaan yang dikenakan ke atas Yong, ianya boleh diertikan bahawa perayu pastinya berniat untuk membunuh Yong di dalam lingkungan maksud s. 300 Kanun Keseksaan. Memandangnya dari perspektif yang lain, perayu tiada sebab untuk menghunuskan pisau tersebut, kerana Yong adalah hanya seorang kanak-kanak berumur lima tahun dan tidak mungkin boleh mencederakan perayu. Oleh itu, hakim yang bijaksana telah tidak silap apabila beliau memutuskan bahawa tidak terdapat keraguan yang wajar yang telah dibangkitkan pada kes pendakwaan.

[Rayuan ditolak.]

Case(s) referred to:
Tan Buck Tee v. PP [1961] MLJ 176 ***(refd)***
Tham Kai Yau & Ors v. PP [1977] 1 MLJ 174 ***(refd)***

Legislation referrred to:
Penal Code, ss. 299, 300

For the appellant - Manmohan Singh Gill; M/s Manmohan Kuna & Assoc
For the respondent - Azman Ahmad DPP

[Appeal from High Court, Muar; Criminal Trial No: 45-10-1998]

Reported by Suresh Nathan

JUDGMENT

Mohd Saari Yusoff JCA:
On 30 April 2001 in an oral judgment we unanimously dismissed the appeal of Nor Hasnizam bin Abdul Latiff against his conviction for murder and the sentence of death passed on him.

The appellant was convicted on the following charge and was sentenced to death:

> Bahawa kamu pada 7hb November 1997 jam lebih kurang 5.45 petang di Kedai Gunting Rambut JIA MIZZlE No. 1, Jalan Cantik, Taman Suraya, Jementah di dalam daerah Segamat di dalam Negeri Johor, telah melakukan kesalahan bunuh dengan menyebabkan kematian kepada ONG YAO YONG (Sijil Kelahiran No. J 472912), dengan itu kamu telah melakukan kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

The facts are as follows: On 7 November 1997 at about 5.30pm the appellant and Mohd. Farid bin Ahmad ("Farid") alighted from their car JBX 4817 and dropped by at a hair dressing saloon known as JIA MIZZI No. 1, Jalan Chantik Satu, Jalan Suraya, Gementah. At that time, only SP7 and her son aged five years named Ong Yao Yong ("Yong") were in the premises.

After entering the premises, the appellant sat down and watched TV. In the case of Farid, he had his hair washed by SP7. Later after SP7 had dried Farid's hair, Farid handed over RM10 to SP7. Then, after SP7 had returned the change of RM5 to Farid, Farid suddenly pulled out a knife and stabbed SP7 a few times. At that point of time, the appellant went up to Yong with a knife and stabbed Yong in the chest. Yong was at that time close by watching TV. Later, both the appellants fled and left the scene in their car.

Immediately after the incident, both the mother and son (deceased) were taken to District Hospital Segamat. SP3 examined Yong and pronounced him to be dead. Post-mortem examination was carried out by a pathologist (SP4).

On the same day, acting on information received, the police succeeded in tracing the car JBX 4817 and they arrested the appellant and Farid at Batu 1 Jalan Segamat/Labis, Johor. From the car, the police found two knives, one wrapped in plastic and the other with newspaper.

According to the pathologist (SP4), the cause of death was due to internal bleeding resulting from the stab wound in the chest. SP4 described the stab wound at the front part of the chest as 4 x 1.8cm and 13cm deep. The stabbing had penetrated the left side of the fifth intercostal area and had injured the 5th and 6th rib slightly. The stabbing also penetrated the heart. He opined that the injuries to Yong could have been caused by a sharp instrument such as a knife (P6). Further, he said that the direction of the stabbing came from the front.

In the defence's case only the appellant gave evidence. In examination in chief, the appellant deposed that he worked as a supervisor in a company known as I.O.I. Segamat. On 7 November 1997, he was on leave and was scheduled to meet a friend at Skudai JB at 9pm. As it was too early to leave for Skudai, he whiled away his time at a waterfall at Gunong Ledang. That evening, while passing through Gementah he and Farid stopped at a dressing saloon with the intention of committing robbery. After entering the premises, he watched TV while Farid had his hair washed by SP7. Later, Farid gave RM10 to SP7 who in turn gave a change of RM5 to Farid. At the stage when Farid was keeping the change in his trousers, Farid suddenly drew a knife and threatened to hurt SP7. SP7 was hurt while trying to run away from Farid. At that point of time, the appellant saw Yong standing on the arm of the sofa. Thinking that Yong

was about to jump down, the appellant went up and grabbed Yong's neck with his left hand. The appellant had a knife in his right hand. Yong was hurt when Yong fell on the knife.

At the hearing of this appeal, the learned counsel for the appellant addressed the court on the issue that the injury inflicted on Yong was accidental. In this case, the trial judge had considered and rejected the defence of accident. It has to be pointed out his lordship also rejected the story of the appellant that he was high on drugs. Before us learned counsel for the appellant did not take up and argue on the matter of the appellant being high on drugs and nothing turns on the trial judge rejecting the story.

On the issue whether death was accidentally caused the learned trial judge had considered the evidence of SP7, SP4 and the appellant and arrived at the following finding:

> Persoalan pertama yang perlu diputuskan ialah samada cerita tertuduh pertama bahawa kecederaan yang dikenakan ke atas simati adalah satu kemalangan dibuat tanpa niat dan secara tidak sengaja. Saya tidak dapat menerima keterangan tertuduh pertama tersebut. Jika versi tertuduh pertama itu benar, saya percaya kecederaan yang dialami oleh si mati tidak akan menjadi sebegitu serius sehingga menembusi karung jantung si mati. Melihat luka tikaman yang dialami si mati, saya berpendapat tikaman dibuat dengan begitu kuat menyebabkan kecederaan tersebut. Oleh itu saya lebih percaya akan versi SP7 yang mengatakan melihat si mati ditikam oleh tertuduh pertama ketika si mati sedang duduk di kerusi. Keterangan SP7 adalah selari dengan keterangan Dr. Shahdan bin Md. Nor (SP4) yang mengatakan semasa disoal-balas oleh peguam tertuduh bahawa luka yang dialami oleh si mati mengarah dari atas ke bawah. Ini pada pendapat saya adalah berlawanan dengan keterangan tertuduh pertama. Jika keterangan tertuduh pertama diambilkira, tentu luka tersebut mengarah dari bawah ke atas.

On the question of intention to kill, it is a matter of inference from the nature of the wounds and it is pertinent to refer to the case of *Tan Buck Tee v. PP* [1961] MLJ 176 at 179 where Thomson CJ (as he then was) observed:

> There was the body with five appalling wounds on it, **wounds penetrating to the heart and liver**, which must have been caused by violent blows with a heavy sharp instrument like an axe. In the absence of anything else, **whoever inflicted those blows must have intended to kill the person on whom they were inflicted.** (emphasis added)

In his submission, the learned counsel for the appellant cited the case of *Tham Kai Yau & Ors. v. PP* [1977] 1 MLJ 174. In that case, the Federal Court discussed at some length the distinction between provision of s. 299 and s. 300 of Penal Code.

The bone of contention of the defence was that the injury caused to Yong was accidental. From the nature of injuries inflicted on Yong referred to earlier and based on the authorities aforesaid, it could be inferred that the appellant must have intended to kill Yong within the meaning of s. 300 of the Penal Code.

Looking from another perspective, we fail to see why appellant had to draw out a knife. He was not in danger nor was he being threatened by anyone. Yong was only a child aged five years and he could not have done any harm to appellant. Apart from the appellant and Farid, only mother and son were in the premises.

Based on the foregoing, it is our view that the learned judge was not in error when he concluded that there was no reasonable doubt raised on the prosecution case thus:

> Kesimpulannya, saya tidak dapat menerima cerita tertuduh mengenai bagaimana si mati mengalami kecederaan tersebut. Saya juga mendapati keterangan tertuduh pertama tidak menimbulkan apa-apa keraguan terhadap kes pihak pendakwa. Oleh itu di akhir kes pembelaan saya berpuashati tanpa apa-apa keraguan yang munasabah bahawa tertuduh pertama adalah bersalah dan disabit atas kesalahan bunuh yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

In the premise and for the reasons given above, we dismissed the appeal and affirmed the conviction and sentence of the court below.